

LAW OFFICES OF JAMES A. ABATE, LLC
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ATTORNEY ID #020512001
ATTORNEY FOR DEFENDANT

Plaintiff

STATE OF NEW JERSEY,

vs.

Defendant

KAMRIN MOORE

:
:
:
: SUPERIOR COURT OF NEW JERSEY
: UNION COUNTY
:
: COMPLAINT NO. 2009-W-2019-000627
:
: **CRIMINAL ACTION**
:
: NOTICE OF MOTION TO DISMISS FOR
: VIOLATION OF DEFENDANT'S RIGHT TO A
: SPEEDY TRIAL
:

TO: **VIA ECOURTS**

Hon. Joseph Donohue, J.S.C.
Union County Superior Court
2 Broad Street
Elizabeth, NJ 07207

PLEASE TAKE NOTICE that, on a date to be scheduled by the Court, the undersigned attorney for Defendant Kamrin Moore will apply to the Hon. Joseph Donohue, J.S.C for the Superior Court of New Jersey, Union county for an Order to Dismiss a Complaint based on the wanton and egregious violation of Defendant's Sixth Amendment Right to a Speedy Trial.

We shall rely upon the attached certifications in support thereof.

Pursuant to R.1:6-2(a), a copy of the proposed Order is annexed hereto, and the motion shall be deemed uncontested unless responsive

papers are timely filed and served stating with particularity the basis of the opposition to the relief sought.

Pursuant to R.1:6-2(d), the undersigned requests oral argument.

Law Offices of James A. Abate, LLC
Attorney for Defendant

Dated:

By: _____
JAMES A. ABATE, ESQ.

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on the date indicated below, the original of the within NOTICE OF MOTION TO DISMISS FOR VIOLATION OF DEFENDANT'S RIGHT TO A SPEEDY TRIAL has been transmitted to the Hon. Joseph Donohue, J.S.C., by US Mail, Karyn Weingarten, Esq., Union County Prosecutors Office, and Court Administrator for Far Hills Township Municipal Court by Regular First Class Mail Delivery.

Law Offices of James A. Abate, LLC
Attorney for Defendant

Dated:

By: _____
JAMES A. ABATE, ESQ.

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I, KAMRIN MOORE, of full age, being duly sworn upon my oath,
appear and say under penalty of perjury:

1. I am the defendant in the above titled action.
2. On July 13, 2019, Officer Antonio Lacosta of the Linden Police signed a complaint against me alleging aggravated assault pursuant to N.J.S.A. 2C:12-1B(7) and N.J.S.A. 2C:12-1B(12).
3. The complaint was signed pursuant to an affidavit of probable cause submitted by 'HP'. No independent investigation, including interviews with identified witnesses, were taken by the Linden Police Department prior to the issuance of this complaint.
4. A cursory investigation would have provided significant evidence that the statement of probable cause signed by 'HP' was a purposeful deception, that I was a victim of a stalker who had attacked my girlfriend and that 'HP' had cause to

manufacture this complaint to cause me harm and did so intentionally.

5. The affidavit of probable cause and video interview of HP states that there was a mutual fight between 'HP' and 'Noel'. Neither 'HP' or 'Noel' were ever arrested in conjunction with this fight. 'Noel' was never asked for a statement or interviewed by the Linden Police Department.
6. HP has admitted under oath that she threw the first punch, yet she has not been arrested for assault. She has admitted under oath that she committed several acts of stalking and has not been arrested.
7. The affidavit of probable cause contains multiple deceptions that a cursory investigation would have uncovered. Specifically, 'HP' indicates that I did not respond to text messages she sent to me on that date. This lie was documented in a video interview as well as testimony given to Hon. Cassandra Corbett, J.M.C., who granted a restraining order based on the deception. In fact, a review of text log of either 'HP' or myself would have revealed that I did respond to her and that I advised her that I did not want to see her. Further that review would have indicated that she sent me harassing text messages over the course of an hour after I indicated that I would not see her. These text messages were provided to the prosecutor and the video interview of HP shows the police ask to see the messages on her phone, but HP says her phone was dead in order to further the deception. (See, Exhibit "A", Text Messages.)
8. A cursory investigation would have revealed that HP had driven six hours from Massachusetts to my home, uninvited, continued to come even though told not to and then waited outside my apartment for over an hour.
9. The complaining witness 'HP' has stalked and harassed me prior

to and after this allegation. She has sent me messages from over ten (10) different phone numbers and social media accounts as I blocked her efforts to communicate with me. In one exchange she demands I unblock her 10 numbers. (See, "Exhibit B", Text Message).

10. Even after receiving a restraining order, HP continued to contact and harass me. The prosecutor has yet to arrest HP for harassment or stalking.
11. As a result of this incomplete investigation, I was arrested, processed, and held in jail, all of which were documented in the press causing me to be suspended and later to lose my job, which I have worked for my entire life.
12. On July 13, 2019 'HP' applied for a restraining order based on the same reported incident before Hon. Casandra Corbett. (See, Exhibit "C", Temporary Restraining Order.) A recording of the application revealed that she repeated her lie that I had not responded to her text message and was simply waiting to see if I would respond.
13. A trial on the restraining order was held before the Honorable Frederick McDaniel, J.S.C., in the Superior Court of New Jersey, Family Division, between August 8, 2019 and August 14, 2019. As this court is aware, Judge McDaniel has over 30 years of experience as a criminal judge and prosecutor.
14. Following the testimony of all identified witnesses, Judge McDaniel, found that the allegation against me was not substantiated and further found that 'HP' was not credible. (See, Exhibit "D", Transcript of Decision).
15. Judge McDaniel, J.S.C., noted in his opinion that 'HP' "never testified that the defendant caused her injuries". 'HP' testified that the injuries were caused by "not the defendant", "not sure", or "it was the defendant's girlfriend". How is the prosecutor planning to prove the charges against me when its

own witness does not believe I caused her injuries and stated this under oath?

16. Judge McDaniel, J.S.C., also viewed video of a prior interaction between myself and HP when I had to ask her to leave my apartment and she refused to get out of my car. His Honor found that she was "pathetically juvenile" and noted of 'HP's' conduct that "she's laughing, she's cursing, she's mocking the defendant, and it was typical stalking or harassing-type behavior by a person who refuses to acknowledge that the other person does not wish to continue in a true relationship."
17. The judge specifically found that 'HP' lacks credibility, stating "Her conduct both before the July 11th episode and after the issuance of a temporary restraining order paint the picture of a jilted ex-girlfriend, engaging in inappropriate conduct aimed at the defendant to either punish his decision to end the relationship, or it's a bizarre attempt to get him back in a manner ill-advised but common amongst unreasonable jilted paramours."
18. Judge McDaniel found that HP had lied under oath on at least two points. One being that she did not recall telling the police that I had responded to her texts and told her not to come. The other was a lie about not having time to text me until she had driven six (6) hours and was near my home as she had not stopped for gas or to use a bathroom or get food. She paused and thought about how she was going to answer and then lied and said she drove straight through. She was immediately contradicted by her own witness who testified they had definitely stopped for gas. How is the prosecutor going to present a witness that lied to the police, lied to Judge Corbett and lied under oath to Judge McDaniel?
19. Judge McDaniel, J.S.C., listed ten specific factors that undermined the credibility of 'HP'.

20. Judge McDaniel, J.S.C. found, "with respect to the predicate offense of assault, I find that there is not sufficient proof beyond a preponderance of the evidence to do so, no predicate act." My attorney advises that this is a much lower standard of proof than the standard of proof beyond a reasonable doubt which would be required at trial for the criminal matter.
21. On August 14, 2019 the restraining order was dismissed. (See, Exhibit "E", Order of Dismissal)
22. Prior to the issuance of this complaint I was employed as a player by the New York Giants of the National Football League.
23. Playing in the NFL has been my dream for my entire life. I have worked tirelessly since my youth in order to achieve this dream. (See, Exhibit "F", Rhayda Barnes Letter)
24. I am a graduate of Boston University, where I was voted captain of the football team based on my character and leadership.
25. The issuance of the complaint resulted in me being suspended from the team and placed on the commissioner's exempt list while this case is pending. (See, Exhibit "G", Letter From the Commissioner)
26. My inability to participate in pre-season team activities resulted in the New York Giants terminating my employment. I had been on the active roster and appeared in games during the 2018 season. Prior to my suspension it was anticipated that I would have continued my employment with the team this season.
27. My continued suspension makes it impossible for me to be signed by another team. Every day that I am unable to play decreases my chances to return to the NFL. I am advised by my legal representatives that the NFL will not reinstate me until this matter is disposed of.
28. It has been 75 days since the complaint was filed. It has

further been 43 days since a judge ruled that these allegations against me were not credible.

29. The delay in resolving this matter has already cost me my employment, and further delay could ruin my career.

30. I have advised the court that I am prepared to waive my right to Grand Jury and am willing to proceed to trial on the accusation if it will get me an immediate trial.

31. I have advised the court that I am prepared waive my right to a trial by jury of my peers if it will get me an immediate trial.

32. I stand prepared for an immediate trial on this matter.

33. I am advised by counsel that this is not the first time that the Union County Prosecutor has sought unsupported charges against an African American football player. It seems to be the prosecutors office has declared a war against successful young black men and in this case seems to be more interested in prosecuting a football player than protecting young men and their girlfriends from stalkers who harass and physically attack them. (Attach Star Ledger article on Kaseem Greene).

34. I am advised that it would not be possible to get a trial, even a bench trial without a long wait due to other pending matters before the court.

35. All I am asking for is the opportunity to bring this nightmare to an end and salvage my reputation and my career while I still can.

Dated:

By: _____
KAMRIN MOORE

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: ESQ.
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I, James A. Abate, Esq., of full age, am the attorney for KAMRIN MOORE in the above matter, and certify the following in support of my client's motion:

1. Attached hereto as Exhibit "A" are text messages from 'HP' to the defendant from July 11, 2019.
2. Attached hereto as Exhibit "B" is a text message from 'HP' to the defendant requesting that he "unblock" her numbers.
3. Attached hereto as Exhibit "C" is Temporary Restraining Order Docket No. FV-20-66-20.
4. Attached hereto as Exhibit "D" is the transcript from the decision rendered by Hon. Judge Frederick McDaniel, J.S.C., indicating that both the applicant and the allegations were not credible.
5. Attached hereto as Exhibit "E" is the Order dismissing the temporary restraining order Docket No. FV-20-66-20 as the

- allegation of domestic violence has not been substantiated.
6. Attached hereto as Exhibit "F" is a letter from Rhayda Barnes to the prosecutor.
 7. Attached hereto as Exhibit "G" is the letter from the Commissioner's Office of the National Football League placing Kamrin Moore on the Commissioners Exempt List.

Law Offices of James A. Abate, LLC
Attorney for Defendant

Dated:

By: _____
JAMES A. ABATE, ESQ.

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LEGAL ARGUMENT

THE COURT SHOULD DISMISS THE CASE FOR VIOLATION OF DEFENDANT'S RIGHT TO A SPEEDY TRIAL

The right to speedy trial is guaranteed by the Sixth Amendment to the United States Constitution, and is imposed upon the states by the Due Process Clause of the Fourteenth Amendment. State v. Tsetskias, 411 N.J. Super. 1, 3 (App. Div. 2009). As a matter of fundamental fairness, excessive delay in completing a prosecution may qualify as a violation of defendant's constitutional right to a speedy trial. State v. Farrell, 320 N.J. Super. 425, 445-46 (App. Div. 1999). The defendant's right to speedy trial attaches upon his arrest. State v. Szima, 70 N.J. 196, 199-200 certif. denied, 429 U.S. 896 (1976). State v. Cahill, 213 N.J. 253, 272 (2013).

In Barker v. Wingo, 407 U.S. 54, 527(1972), the United States Supreme Court announced a four-part test to determine when a defendant's due process rights are infringed upon by prosecutorial delay. Courts must take into account (1) the "length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his right and (4) prejudice to the defendant." Ibid.

In Cahill, the New Jersey Supreme Court adopted the Barker test and held that the test may be applied to disorderly persons prosecutions. 213 N.J. at 271-272, (See also) State v. Berezansky, 386 N.J. Super. 84 (App. Div. 2006).

No single factor is necessary or sufficient for dismissal based upon violation of the right to speedy trial. Barker, 407 U.S. at 522. Each factor is interrelated, and each factor must be considered as it relates to the case at hand. In considering the relevant factors, the trial court should weigh the "societal right to have the accused tried and punished" and a defendant's right to have their case heard "fairly not oppressively." State v. Dunns, 266 N.J. Super. 349, 380 (App. Div.) quoting State v. Farmer, 48 N.J. 145, 175 (1967), certif. denied, 134 N.J. 567 (1993)).

LENGTH OF THE DELAY

In State v. Perkins, the Law Division, on de novo review, dismissed a DWI charge after only three months because the trial judge set a date certain for trial, then failed to abide by his order. 219 N.J. Super. at 121,125-26 (Law Div. 1987). The defendant's right to speedy trial attaches upon his arrest.

Also relevant is Rule 3:25-4, which governs Speedy Trial for Certain Defendant's, and requires that the State has ninety (90)

days to present a matter to Grand Jury. While the rule governs cases where a defendant is incarcerated, it is still persuasive in cases, such as Mr. Moore's, where the effects of the delay are extreme. Due to the still unindicted charges pending against Mr. Moore, he has been terminated from his employment and continues to see his prospects for future employment evaporate. In an era where charged individuals are being judged by society and their employers well before the Court, it is incumbent upon the State to verify allegations prior to bringing charges. In this respect it is extremely pertinent that Honorable Frederick McDaniel, J.S.C., has already found that these allegations are not credible even under a preponderance of the evidence standard.

In this matter, Mr. Moore was arrested two months ago. This matter has yet to be scheduled for grand jury or placed on a trial schedule. Mr. Moore, through his attorney, has informed the court that he is prepared to proceed to a bench trial on the accusation in order to expedite the resolution of his case. Despite these waivers, the Court has indicated that due to its caseload there is no possibility of proceeding to trial in the near future. Instead this matter will be referred to Grand Jury, which bring Mr. Moore no closer to conclusion of the matter.

To continue the prosecution against Mr. Moore, would infringe upon his constitutional right to a speedy trial according to the Sixth Amendment to the United States Constitution, and as it applies to the State of New Jersey through the Fourteenth Amendment.

THE REASON FOR THE DELAY

In State v. Fulford, the Court upheld the Law Division's denial of the defendant's motion to dismiss the case because the reason for

the thirty-two month delay was to wait for the defendant to finish his pretrial intervention program. The Court applied the Barker factors and held that the delay benefitted the defendant. State v. Fulford, 349 N.J. Super. 183, 194-96 (App. Div. 2002).

The continuance in this case is not attributable to the defense. The matter has now been scheduled three times for pre-indictment conference. The first two of these appearances were adjourned to allow the Union County Prosecutor's Office to further investigate the merits of the case. These investigations should have proceeded the issuance of the present complaint. Instead, charges were filed against Mr. Moore, resulting in his arrest, incarceration, and the loss of his job, and only now is the State concerned with determining the accuracy of the complaint.

The defense has attempted to aide the State in its investigation. Due to the efforts of Mr. Moore through his attorney, the State is in possession of transcripts of testimony that reveals that the alleged victim has was not truthful in her statement of probable cause. Specifically, the transcript documents that the victim is unable to attribute any of her injuries to the defendant. In fact, Judge McDaniel, J.S.C. noted in his opinion that it was the alleged victim who engaged in stalking type behavior and indicated that this complaint is an attempt to punish Mr. Moore. Nonetheless, the State has still failed to dismiss this complaint.

In Cahill when the State offered no justification of the delay, the court weighed this against the State, recognizing that it is the State which bears the responsibility to prosecute the matter. Cahill, 213 N.J. at 273-274.

THE DEFENDANT'S ASSERTION OF THE RIGHT

The defendant's right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution, and is imposed upon the states by the Due Process Clause of the Fourteenth Amendment. State v. Tsetskas, 411 N.J. Super. 1, 3 (App. Div. 2009). The right attaches upon the arrest. State v. Szima, 70 N.J. 196, 199-200, certif. denied, 429 U.S. 896 (1976). Defendant asserted his speedy trial rights in the initial correspondence to the State and the Court and subsequent thereto including correspondence to the Court. Moreover, Mr. Moore has attempted to waive his right to grand jury and trial by jury, but was informed that his request for an expeditious trial could not be accommodated.

PREJUDICE TO THE DEFENDANT

There need not be a showing of prejudice as a necessary element in the denial of the constitutional right to a speedy trial. Cahill 213 N.J. 253, 274 1278 (2013). Prejudice can be found however, from employment interruptions, public obloquy, anxieties concerning the continued and unresolved prosecution, the drain on finances and the like. State v. Smith, 131 N.J. Super. 354, 363-64 (App.Div. 1974) aff'd, 70 N.J. 213 (1976).

The length of delay has affected the defendant's ability to defend this case on its merits. The delay in scheduling a final trial date has caused the defendant to incur counsel fees, and has caused great stress to Mr. Moore, who has had to endure the anxieties associated with an unresolved case of this magnitude.

Throughout society the presumption of innocence of those charged with criminal offenses is eroding. As is becoming increasingly common, the National Football League has a policy of

suspending players while criminal charges are pending. As a result of the charges and that suspension, Mr. Moore's employment has been terminated. This pending complaint makes it impossible for Mr. Moore to gain new employment, causing significant strain on his financial resources. More significantly, the opportunities for employment in Mr. Moore's chosen field are extremely limited. Every day he is exempt from participating in National Football League activities further increases the likelihood that he will not be signed by a team. The delay in resolving this case is quite literally costing Mr. Moore his dream and his life's work.

Mr. Moore has already expended significant sums in order to litigate the associated restraining order, at a time when his ability to earn an income has been severed. The result of that litigation was that a respected member of the judiciary has found the victim and the allegations in this complaint lacked credibility. Now the delay to litigate this matter by the State punishes Mr. Moore for conduct that he has already been exonerated of. The delay in resolving this case has caused the alleged victim 'KB' to be successful in her goal of punishing Mr. Moore for ending their relationship, as the Honorable Frederick McDaniel, J.S.C. opined.

CONCLUSION

For the foregoing reasons, this matter should be dismissed. In the alternative, the private prosecutor should be disqualified.

Law Offices of James A. Abate, LLC
Attorney for Defendant

Dated:

By: _____
JAMES A. ABATE, ESQ.

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: ORDER
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THIS MATTER, having been brought before the court by the LAW OFFICES OF JAMES A. ABATE, LLC, James A. Abate, Esq., attorneys for the Defendant, KAMRIN MOORE, seeking an Order to Dismiss for violation of defendant's right to a speedy trial, and for good cause having been shown;

IT IS on this ____ day of _____, 2019,

The matter above has been DISMISSED for violating defendant's right to a speedy trial.

IT IS FURTHER ORDERED that a copy of this Order is to be served upon the parties hereto within seven (7) days.

This Motion was: _____ Opposed _____ Unopposed

J.S.C.